IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATIONS NO. 264 & 266 OF 2000

Mr. Hari Nilkanth
Falari, major,
businessman, r/o
Dattawadi, Mapusa,
Bardez, Goa. ... Petitioner

Versus

1. Smt. Satyavati T. Naik,

2. Shri Ashok T. Naik,

3. Smt. Ashok T. Naik,

4. Shri Kishore T. Naik,

5. Smt. Kishore T. Naik,

6. Shri Uday T. Naik,

7. Shri Anand T. Naik,

8. Shri Yogeshwar T. Naik,

9. Shri Shabi T. Naik,

10. Miss Shobha T. Naik,
All major of age, r/o
Siolim, Bardez, Goa. ... Respondents.

Shri M. S. Sonak, advocate for the petitioner in Civil Revision Application no.264/2000 and Shri M. B. D'Costa for the petitioner in Civil Revision Application No.266/2000.

Shri V. B. Nadkarni, Senior Advocate with Shri Y. V. Nadkarni, advocate for respondents no.1 to 3 & 7.

CORAM: V. C. DAGA, J.
DATE: 5th July, 2002.

ORAL JUDGMENT

The impugned Orders passed by the Civil Judge, Senior Division, Mapusa, both dated lst July, 2000, in proceedings styled as Civil Misc. Applications No.149/99/Sr. and 170/99/Sr. are the subject-matter of

challenge in both revision applications. The parties are common. The nature of impugned Orders is similar. The issues involved are identical. The facts are also common, as such, these matters were heard together and are being disposed of by this common Judgment, for the reasons recorded herein; without going into the detailed facts and challenges set up by the rival parties.

2. Having heard the parties and considering the consensus between the parties, the impugned Orders are liable to be set aside on the short ground that no such orders could have been passed by the Executing Court, that too after disposal of the substantive execution proceedings by earlier Order dated 16th June, 2000. The Order in question ought to have been passed during the pendency of the execution proceedings or, at least, before disposal thereof. Once the substantive execution application is disposed of, no such orders, much less any order, could be passed by the Executing Court for want of any pending proceeding. The Executing Court had become functus officio with the disposal of the execution proceedings. It had no jurisdiction to pass the impugned Orders. Apart from the above, technical defect, from which the impugned Orders suffer, it was expected of the Executing Court to record a reasoned order after referring to the law laid down by this Court and the Apex Court from time-to-time. The impugned Orders are perfunctory and as such cannot stand the scrutiny

of law. Since I am disposing of these cases and setting aside the impugned Orders looking to the consensus between the parties and for the reasons recorded while disposing of the Civil Revision Applications no.255 and 256 of 2000 and the proceedings are being remanded for fresh adjudication, I do not propose to dwell on the merits or demerits of the Orders in question, except saying that the orders are passed in a most casual and perfunctory manner.

3. Since the execution proceedings bearing no.47/99/A and 48/99/A are restored to file, and the Executing Court is asked to decide the same after recording separate evidence in separate proceedings, the Executing Court is directed to treat the Civil Misc. Applications No.149/99/Sr. and 170/99/Sr. as objections filed under Section 47 C.P.C. in the relevant execution proceedings and, to proceed with the hearing and decide these objections on their own merits, without getting influenced with the impugned Orders. The impugned Orders are set aside. The Executing Court is directed to try both proceedings separately without creating any confusion between the two different execution proceedings. The observations made may be treated as prima facie.

4. The parties are directed to appear before the Executing Court on 15th July, 2002. The trial Court is directed to proceed with the matter in accordance with law

and dispose of the same after recording evidence of the parties on its own merits as expeditiously as possible, at any rate, within a period of three months from the date of receipt of the writ from this Court.

5. The Civil Revision Applications stand disposed of with no order as to costs.

V. C. DAGA, J.

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